

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STACEY LOIBL and STACEY LOIBL as	§	
Special Administrator for the estate of	§	
WAYNE RICHARD LOIBL,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Case No. _____
	§	
DAVIS-STANDARD, LLC and ABC	§	
INSURANCE COMPANY,	§	
	§	
Defendants.	§	
	§	

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant, Davis-Standard, LLC (“Davis-Standard”) hereby removes the above-captioned action from the Dane County Circuit Court, Wisconsin, to the United States District Court for the Western District of Wisconsin. Removal is warranted under 28 U.S.C. § 1441 because this is a diversity action over which this Court has original jurisdiction under 28 U.S.C. § 1332. In support of this Notice of Removal, Davis-Standard states the following:

STATE COURT LAWSUIT

1. This case involves a Wisconsin individual, Stacey Loibl, in her individual capacity and as special administrator of the estate of Wayne R. Loibl who allegedly sustained injuries arising from Wayne R. Loibl’s use of an allegedly defective film winding machine. On March 30, 2022, Plaintiffs filed suit against Davis-Standard in the Dane County Circuit Court, Wisconsin, Case No. No. 2022CV000717. *See* Plaintiffs’ Complaint (Ex. A).

2. Davis-Standard now removes this case to this Court based on diversity jurisdiction.

GROUND FOR REMOVAL

3. This action is removable pursuant to 28 U.S.C. § 1441. As set forth herein, this Court has original diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because this action is between citizens of different states, and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

I. Minimal Diversity Requirement.

4. Minimal Diversity Requirement. As alleged in Plaintiffs' Complaint, this action is between citizens of different states. (Ex. A).

5. Upon information and belief, including the representation on the face of Plaintiffs' Complaint, Plaintiff Stacey Loibl is a citizen of Wisconsin. (Ex. A, ¶ 1).

6. Upon information and belief, including the representation on the face of Plaintiffs' Complaint, Wayne Richard Loibl was a citizen of Wisconsin. (Ex. A, ¶ 2). As such, the special administrator of his estate is a citizen of Wisconsin. 28 U.S.C. § 1332(c)(2).

7. Davis-Standard is a citizen of a foreign state. "For diversity jurisdiction purposes, the citizenship of an LLC is the citizenship of each of its members." *Thomas v. Guardsmark, LLC*, 487 F.3d 531, 534 (7th Cir. 2007). The sole member of Davis-Standard is Davis-Standard Holdings, Inc., a Delaware Corporation with its principal place of business in Pawcatuck, Connecticut. Accordingly, Davis-Standard is a citizen of Delaware and Connecticut for diversity purposes.

8. The citizenship of ABC Insurance Company, a fictitious defendant, must be disregarded for purposes of removal. 28 U.S.C. § 1441(b)(1).

9. Accordingly, there is complete diversity among Plaintiffs and Davis-Standard, and removal is proper under 28 U.S.C. § 1332(a)(1).

II. Amount in Controversy Requirement.

10. Plaintiffs' Complaint does not specify a specific amount of damages requested.

11. However, "a defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014). When the complaint does not state the amount in controversy, "the defendant's notice of removal may do so." *Id.* at 84. A defendant's "amount-in-controversy allegation should be accepted when not contested by the plaintiff or questioned by the court." *Id.* at 87.

12. Here, Plaintiffs allege that "[a]s a direct and proximate result of all Defendant's negligence and breach of warranties, Mr. Loibl was injured and died," including "substantial pain and suffering." (See Ex. A, ¶¶ 10, 24). Plaintiffs also allege that Mrs. Loibl "sustained damages and has a claim per Wisconsin Statutes Section 895.04." (See Ex. A, ¶ 24). Davis-Standard asserts that the amount in controversy exceeds \$75,000 based upon the injuries asserted in Plaintiffs' Complaint and Plaintiffs' previous assertion that the amount in controversy exceeded \$75,000. See Complaint in *Loibl v. Davis-Standard, LLC*, 22-cv-092-wmc, ¶ 6 (W.D. Wis. 2022) ("... the amount in controversy exceeds the \$75,000.00 jurisdictional requirement.").

13. Accordingly, Davis-Standard has plausibly alleged that the "matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs." 28 U.S.C. § 1332(a). Therefore, the jurisdictional amount is satisfied in this case, and removal is proper under 28 U.S.C. § 1332(a)(1).

PROCEDURAL REQUIREMENTS

14. Timeliness of Removal. This Notice of Removal is timely because it is being filed within 30 days of Davis-Standard receiving, through service or otherwise, a copy of Plaintiffs' Complaint. 28 U.S.C. § 1446(b)(1). Davis-Standard was served on April 21, 2022.

15. Removal to Proper Court. This Court is the appropriate court to which this action must be removed because it is part of the district and division within which this action is pending, namely, Dane County, Wisconsin. 28 U.S.C. §§ 1441(a), 1446(a).

16. Filing and Service. As required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be contemporaneously filed in the Circuit Court served on all counsel of record.

17. Pleadings and Process. Davis-Standard has not been served with any process, pleadings, or orders in this action other than Summons and Complaint. *See* 28 U.S.C. § 1446(a).

18. Davis-Standard reserves all of its rights and defenses, including without limitation those rights and defenses under Fed. R. Civ. P. 12 and will timely respond to the Plaintiffs' Complaint in accordance with Fed. R. Civ. P. 81.

Respectfully submitted this 13th day of May, 2022.

/s/ Patrick S. Nolan

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